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THOMAS S. VIRSIK

April 1, 2016

Via Email: SGMPS@water.ca.gov

California Department of Water Resources
Attn: Lauren Bisnett, Public Affairs Office
P. O. Box 942836
Sacramento, California 94236

Re: Draft GSP Emergency Regulations Public Comment

Dear Sir or Madam:

Thank you for the opportunity to provide formal comments on the Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives (the "Draft Regs"). This office provided a narrow comment on a possible typo level mistake on 22 February 2016. This set of comments is primarily focused on Article 8 addressing Coordination Agreements.

Factual Setting re Coordination Agreement Comments

While this office does not represent any client with lands in San Luis Obispo County, it has historically and continues to represent interests in Monterey County that apparently overlie parts of the Paso Robles Groundwater Basin, a basin designated as in critical overdraft. This is the Basin designated as 3-04.06 in Bulletin 118. Enclosed are two late 2015 letters exchanged between the Director of Public Works for the County of San Luis Obispo and the SWRCB on the subject of State (SWRCB or the "Board") intervention under SGMA. In the past few weeks, an attempt to create a GSA in part of the Paso Robles basin in San Luis Obispo County failed at the polls, and there have been media reports of various local interests calling for the Board to intervene and manage the basin right away. In addition, the Monterey County Water Resources Agency submitted a request to DWR last week on a jurisdictional boundary modification at the County line of the Paso Robles Basin. This office may provide comments on that boundary change request if and when DWR opens the comment period.

Given the factual and legal context of the Paso Robles basin, parts of the Basin could be managed by a local agency (presumably a GSA formed in Monterey County) while parts may be managed via State intervention. Water Code §§ 10735 et seq. Our review of the Draft Regs reveals no provision for coordination with the Board. The public question and answers sessions of last week provided an additional opportunity to confirm with DWR staff our conclusion that the Draft Regs lack any content about coordinating with the Board. While our factual basis is the

Paso Robles basin, the below comments apply generally to all factual situations where the Board may be involved in management under SGMA.

Suggested Modifications to Draft Regulations

Comment and suggestion. The “definitions” portion of the Draft Regs at § 351 omits any recognition of State intervention or an Interim Plan role. See Water Code §§ 10735. We suggest the following modifications:

- A new subsection defining “Board” as the SWRCB.
- Add a definition of “Submitting Agency” which term is referenced in Draft Reg 357.4(b).
- (i) Include language for the definition of a “Coordinating Agency” along the lines of “but does not include the Board.” The intent is that when the Board and one or more Agencies coordinate, any point of contact will NOT be the Board because DWR has a preexisting consultation role with the Board. See Draft Reg 355.8.
- (u) Broaden the definition of a “Plan” to include “any Board intervention or management of a Basin, including an Interim Plan.”

Comment and suggestion. Article 8 about Coordination Agreements lacks any recognition of the role of the Board when it manages a basin. We suggest the following modifications:

- In Draft Reg 357.2 and in other references in Article 8, broaden the term “Agencies” to “Agencies and/or the Board” so as to include within its ambit coordination that includes the Board when the Board is exercising its SGMA management or intervention role.
- In Draft Reg 357.4(i) broaden the language to include the Board, e.g., add to the end “agreement, which must include the Board when it is administering a Basin pursuant to Water Code sections 10735 et seq.”

Comment and suggestion. Under SGMA, if a medium or high priority basin is not being properly managed at certain key dates, the Board may designate it as probationary and develop an Interim Plan. Water Code § 10735.2. The Board will not do so if either a local agency or a collection of local agencies is working towards, or has, developed a plan for managing the “entire basin.” Water Code § 10735(a)(1, 2 and 4)(A) and (B). The Draft Regs lack any content about how, when, and under what conditions one or more local agencies that are managing part of an “entire basin” may choose or be tasked by the Board to manage the rest of the “entire basin” and thereby make Board intervention unnecessary.

For example, given the above factual and legal reality in the Paso Robles basin that straddles the Monterey – San Luis Obispo County line, the above referenced statutory language appears to allow one or more Monterey County local agencies to elect to manage the San Luis Obispo part of the “entire basin” if San Luis Obispo County is not doing so. We suggest the following entirely new regulatory content:

- Either in Articles 6 or 8 (or both) add one or more new regulations under the authority of Water Code section 10735.2 that provide when, how, and under what circumstances a local agency (or a collection) may elect to manage the “entire basin” if and when one or more jurisdictions choose not to manage their portion as of the key statutory dates. The language in subsection “(a)” requires notice and a public hearing, so the new Regulation(s) can provide that the public notice will allow a time certain for one or more local agencies to choose to manage the rest of the “entire basin.” Also note that subsection “(b)” explicitly references the (not yet adopted) Draft Regs as a basis for Board exercise of its discretion. The Draft Regs are therefore the appropriate means for providing how the Board intervention statute is to be implemented in terms of timing, minimum requirements, and other details.

Thank you for the opportunity to provide comments on a matter of statewide importance.

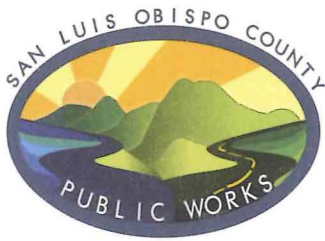
Very truly yours,

Thomas S. Virsik

Thomas S. Virsik

Encl. November 17, 2015 letter from Wade Horton to Thomas Howard, SWRCB
December 15, 2015 letter from Thomas Howard to Wade Horton, SLO County

c. Thomas Howard, SWRCB
Rob Johnson, Monterey County Water Resources Agency



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Wade Horton, Director

County Government Center, Room 206 • San Luis Obispo CA 93408 • (805) 781-5252

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November 17, 2015

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 93814

SUBJECT: Request for Information Regarding Potential State Water Resources Control Board Fees and Management Activities within the boundaries of the proposed Paso Robles Basin Water District under the Sustainable Groundwater Management Act (SGMA)

Dear Mr. Howard,

On November 10, 2015, the San Luis Obispo County Board of Supervisors took action to initiate local SGMA compliance in the Paso Robles Groundwater Basin (Basin). Such action includes formation of the Paso Robles Basin Water District (a California Water District with certain unique features, including a hybrid board of directors as set forth in AB 2453 (Water Code Section 37900 et seq.) (Water District)¹ and the approval of a special tax² under Proposition 218. In addition, the Board of Supervisors directed the Public Works Director to write to the State Water Resources Control Board (SWB) in an attempt to seek clarity on SWB management in probationary basins under SGMA. Hopefully your staff can review the questions presented in this letter and are able to provide a response in a timely manner.

The decision to seek clarification from the SWB is based on feedback from outreach to over 1,300 unique stakeholders within the Basin. As these individuals learn about their management and funding options under SGMA, the most common question asked is what SWB management would entail. In order to provide voters with the most information possible prior to the March 8, 2016 elections, the following four categories are areas on which the County is seeking clarification and/or detailed information.

1. State Intervention³ - Groundwater Management

During meetings of the Local Agency Formation Commission (LAFCO) for the Water District formation, SWB staff attended two meetings and gave detailed presentations on SGMA and State groundwater management of a probationary basin. Due to the fact that

¹ The formation election is subject to a simple majority of ballots returned by affected landowners.

² The special tax election is subject to 2/3 approval of registered voters.

³ Per Water Code 10735 et seq.

State intervention may not start until 2018, details on this subject were still conceptual and limited to statements that groundwater management would focus solely on demand management. Your staff suggested that the SWB would meter all groundwater extractors in the basin, establish the sustainability goal of the basin, and reduce pumping of all extractors to meet the long-term sustainability goal. Additionally, no physical solutions would be investigated, developed or implemented. We are seeking confirmation of this demand management approach and would appreciate any additional input or direction on the subject.

2. State Intervention – Fees

During the same LAFCO meetings SWB staff also indicated that State intervention would result in a substantially higher cost to the regulated community than local management. While we understand the SWB is not obligated under SGMA to develop State fees until July 1, 2017,⁴ our local process has included the initiation of a Proposition 218 special tax proceeding, which means local SGMA compliance costs have been established. The proposed annual budget for local SGMA compliance is not to exceed \$950,000 and the following table shows the assignment of costs to parcels within the boundaries of the Water District.

TYPE OF CHARGE	ANNUAL CHARGE
1. All Parcel Charge	\$15
2. Per Unit Charge	
Single Family Residential (SFR)	\$20
Multi-Family Residential (MFR)	\$40
Commercial/Government/Industrial	\$100
Vacant	\$10
3. Per Acre Charge	
Non-Irrigated	\$0.25/acre
Irrigated	\$18/acre

With this funding formula, a rural resident would pay the \$15/year parcel charge plus the Single Family Residential charge of \$20/year plus \$0.25 per acre for non-irrigated land. For example, a 10 acre homeowner with no identified irrigated land would have an annual cost of \$37.50. Our research indicates that approximately 60% of the Single Family Residential parcels (out of a total of 3,858) are on 10 acres or less. Thus, their annual charge would be \$37.50 or less, which amounts to only \$3.13 or less on a monthly basis.

Rangeland, open space and any other property not categorized as irrigated acreage would pay the \$15/year parcel charge plus the \$10/year vacant charge plus \$0.25 per acre. For example, a 100 acre parcel being utilized as rangeland would have an annual cost of \$50. Irrigated agriculture would pay the \$15/year parcel charge plus the \$10/year

⁴ Water Code Section 1529.5

vacant charge plus \$18 per acre of irrigated land. For example, a 100 acre parcel with 100% of the parcel being utilized for irrigated agriculture would have an annual cost of \$1,825. The intent of the large cost difference between the non-irrigated and irrigated charge is to best represent pumping activity (in the absence of metering) on that parcel.

Another way to look at the formula is to calculate costs on the same size parcel for various types of land use. The following chart shows the impact of the funding formula to SFR, MFR, commercial, rangeland and irrigated agriculture for 10, 25 and 100 acre parcel sizes.

10 Acre Parcel	Annual Charge	25 Acre Parcel	Annual Charge	100 Acre Parcel	Annual Charge
SFR	\$ 37.50	SFR	\$ 41.25	SFR	\$ 60.00
MFR	\$ 57.50	MFR	\$ 61.25	MFR	\$ 80.00
Commercial	\$ 117.50	Commercial	\$ 121.25	Commercial	\$ 140.00
Rangeland	\$ 27.50	Rangeland	\$ 31.25	Rangeland	\$ 50.00
Irrigated Ag (100% of Acreage Irrigated)	\$ 205.00	Irrigated Ag (100% of Acreage Irrigated)	\$ 475.00	Irrigated Ag (100% of Acreage Irrigated)	\$ 1,825.00

Given the fully developed Paso Robles Basin local SGMA compliance costs, we are hoping SWB staff can review these costs and provide input on:

- A comparison of SWB fees for the Paso Robles Basin
- Method of collection of such fees
- Voter approval (are SWB fees subject to Proposition 218?)
- What groundwater management efforts will still need to be accomplished at the local level simultaneous to SWB management

3. De Minimis User Exemptions

A common belief expressed during stakeholder outreach is that de minimis extractors⁵ are exempt from SGMA. County staff has interpreted any such “exemption” for de minimis extractors as limited to *local* metering programs⁶ and *regulatory* fees.⁷ We are seeking clarification that the SWB does not interpret the above-cited provisions as exempting de minimis users from a SWB metering program or SWB fees. Any other pertinent information regarding de minimis users as it relates to SWB management of the Paso Robles Basin would be appreciated.

4. Adjudication and SWB Groundwater Management

Another common belief expressed during stakeholder outreach is that “adjudication” of the Paso Robles Basin (a basin that is not identified in Water Code Section 10720.8) will eliminate the requirement for both local management and/or SWB intervention under

⁵ Water Code Sections 10721(e), 10725.8 and 10730

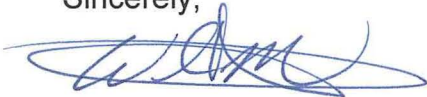
⁶ Water Code Section 10725.8

⁷ Water Code Section 10730

SGMA. Please elaborate on how local or SWB intervention would proceed should the Paso Robles Basin be adjudicated, both in the event that a "comprehensive adjudication" as described in the recently enacted AB 1390 and SB 226 (Civil Code Section 830(c) is initiated or in the event that the action does not ripen into such a "comprehensive adjudication."

Thank you for taking the time to review this request and provide a response. If possible, I would kindly ask we receive a response by December 11, 2015. Should you have any questions, please contact John Diodati at (805) 788-2832 or jdiodati@co.slo.ca.us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Wade Horton', with a stylized flourish at the end.

WADE HORTON
Director of Public Works

c: Assemblyman Katcho Achadjian
Senator Bill Monning
Erik Ekdahl, SWB

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State Water Resources Control Board

December 15, 2015

Mr. Wade Horton
Director of Public Works
San Luis Obispo County
County Government Center, Room 206
San Luis Obispo, CA 93408

Dear Mr. Horton:

Thank you for your November 17, 2015 letter. We appreciate the opportunity to learn more about the Paso Robles Basin Water District formation efforts, and the steps that are being taken toward locally-driven groundwater sustainability for the basin. Your letter requests clarification on the potential role of the State Water Resources Control Board (State Water Board) in implementing the Sustainable Groundwater Management Act (SGMA) and includes a number of questions in the following four general areas: groundwater management, fees, de minimis user exemptions, and the effect of an adjudication on state and local roles in managing the basin.

As a general management principle, the State Water Board does not intend to intervene in any groundwater basin unless local management efforts are unsuccessful. State intervention can only occur if local authorities fail to adequately manage the basin under the following circumstances: 1) a local agency or group of local agencies fails to develop a groundwater sustainability agency (GSA); 2) a GSA fails to develop a groundwater sustainability plan, or; 3) the Department of Water Resources (DWR), in consultation with the State Water Board, finds that a sustainability plan is inadequate or is not being implemented adequately.

The State Water Board is committed to providing technical and managerial assistance to support local groundwater management efforts, and would much prefer to see local efforts succeed in achieving sustainable groundwater management before state-developed management approaches are necessary. If intervention does occur, the State Water Board's goal will be to return the basin to local management as soon as local authorities can demonstrate their capability and willingness to manage the basin sustainably.

Responses to your specific question are provided below:

1. State Intervention - Metering and Groundwater Management

Your letter seeks confirmation of statements made by State Water Board staff regarding state intervention and metering requirements, and whether state intervention would focus solely on demand management or if implementation of a physical solution would be considered. The need for metering is dependent on local conditions and the level of intervention required in the basin. The State Water Board may intervene if one or more GSAs are not formed to cover the

entire basin, leading to "unmanaged areas." Groundwater extractors in unmanaged areas must report extraction data directly to the State Water Board, which can then begin the process of designating the basin as probationary and developing an interim groundwater management plan (Interim Plan). Meters will likely be required to verify extraction volumes, and will become increasingly important as additional intervention actions are needed.

If the State Water Board must develop an Interim Plan to directly manage the basin's groundwater resources, the State Water Board will need to develop a water budget, and would likely need to meter existing extractions in order to assess how local extractions compare to that budget and to manage demand. Metering of extractions will be necessary to verify compliance with pumping restrictions, will be at the pumper's expense, and will include associated reporting and extraction fees.

We expect that most Interim Plans will not initially focus on physical solutions for the basin. Physical solutions are typically projects that help increase water supply, and can include stormwater capture, desalination, reservoir construction, and other approaches. While the Water Code allows for physical solutions to be included in an Interim Plan (Cal. Wat. Code, § 10735.8, subd. (c)), these sorts of projects would most likely be proposed and paid for by the local community. Generally, local agencies and their community members will be in a better position than the State Water Board to decide whether to proceed with any particular project and to structure a financing plan. Accordingly, the State Water Board expects to focus on demand management (i.e., pumping reductions) to reduce water use to meet a sustainability goal.

2. State Intervention – Fees

Your letter posed the following questions with respect to state intervention and associated fees: what fees would be likely under State intervention and how would costs for individual landowners compare to costs for local management by a Groundwater Sustainability Agency (GSA)? How would fees be collected, and would State Fees be subject to a Proposition 218 vote?

State oversight fees will be based on recovering costs incurred in administering state intervention activities. Intervention activities can include, but are not limited to, investigations, facilitation, monitoring, enforcement, and administrative costs – in essence, all of the same activities as a locally-developed SGMA plan. However, state intervention will also include a number of additional actions, which could lead to higher costs. Notably, a GSA's preparation and adoption of a groundwater sustainability plan is exempt from the California Environmental Quality Act (CEQA; Water Code section 10728.6) while Board-developed interim plans are not. State costs associated with CEQA compliance will be recovered through fees. Costs for Board hearings related to designation of probationary basins and adoption of interim plans would also need to be recovered.

Possible billing methods for these and other state intervention costs are still being determined. One possible approach is to bill each parcel owner directly through the State Board of Equalization, with the fee included as an item on each landowner's tax bill. The State Water Board's cost recovery program will consist of state imposed regulatory fees, which are not subject to Proposition 218.

3. De Minimis Extractors and SGMA

De minimis extractors are exempted from local metering programs under Water Code section 10725.8, subdivision (e), and are exempt from local regulatory fees under Water Code section 10730, subdivision (a) unless the GSA regulates minimis users as part of the local sustainability plan.

De minimis exemptions to metering programs and fees do not apply under certain circumstances of state intervention. Water Code section 5202 exempts de minimis users from requirements to report groundwater extractions to the State Water Board – unless the basin is designated as a probationary basin and the State Water Board has determined that de minimis users need to be incorporated as part of a state-developed management approach. Once the basin is designated as probationary, it is up to the State Water Board to determine whether regulation of de minimis extractors is an important component of basin management; if needed, the State Water Board can require reporting and associated fees from de minimis extractors.

In addition to fees for filing extraction reports, de minimis extractors would likely be required to pay a share of the costs incurred in connection with investigations, facilitation, monitoring, hearings, enforcement, and administrative costs for state intervention.

4. Groundwater Adjudications and SGMA

Adjudicated areas that are not specifically exempted in Water Code section 10720.8, and all future groundwater adjudications, are subject to SGMA. Water Code section 10720.8, subdivision (e) provides that where an adjudication action has determined the rights to extract groundwater for only a portion of a basin, only the area where extraction rights have been determined would be excluded from the requirements of SGMA.

In recent legislation regarding groundwater adjudications, the Legislature has made clear that any future adjudication effort cannot circumvent SGMA, and should be managed to avoid interference with SGMA efforts. The relationship between adjudicated basins and SGMA can be summarized as follows: SGMA applies if a basin is adjudicated in the future, SGMA applies during an adjudication action, and a pending adjudication does not prevent the state from intervening if SGMA deadlines and requirements are not met. In limited circumstances, after the conclusion of a comprehensive adjudication, SGMA may be enforced by a court rather than the State Water Board; however, the basin would still need to comply with all of SGMA's requirements.

Regardless of a water user's basis of right, using groundwater in a manner that exacerbates overdraft of the basin is both unsustainable and unreasonable. Groundwater users in overdrafted basins must work together to manage the basin sustainably, or state intervention will bring the basin to a sustainable condition until such time as basin water users can themselves sustainably manage the basin for this and future generations.

Sincerely,


Thomas Howard
Executive Director

cc: See next page.

cc: The Honorable Katcho Achadjian
California State Assembly

The Honorable William W. Monning
California State Senate

Mr. David Gutierrez
Department of Water Resources